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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Keith Preston Nance,) No. CV 13-0313-PHX-RCB (DKD)
Plaintiff,)
vs.)
Allen Miser, et al.,)
Defendants.)
)

O R D E R

Plaintiff Keith Preston Nance, who is confined in the Arizona State Prison Complex, South Unit, in Florence, Arizona, has filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 and an Application to Proceed *In Forma Pauperis*. The Court will order Defendants Ryan, Linderman, and Miser to answer Count I of the Complaint.

I. Application to Proceed *In Forma Pauperis* and Filing Fee

22 Plaintiff's Application to Proceed *In Forma Pauperis* will be granted. 28 U.S.C.
23 § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C. § 1915(b)(1).
24 The Court will assess an initial partial filing fee of \$10.66. The remainder of the fee will be
25 collected monthly in payments of 20% of the previous month's income each time the amount
26 in the account exceeds \$10.00. 28 U.S.C. § 1915(b)(2). The Court will enter a separate
27 Order requiring the appropriate government agency to collect and forward the fees according
28 to the statutory formula.

1 **II. Statutory Screening of Prisoner Complaints**

2 The Court is required to screen complaints brought by prisoners seeking relief against
 3 a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C.
 4 § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised
 5 claims that are legally frivolous or malicious, that fail to state a claim upon which relief may
 6 be granted, or that seek monetary relief from a defendant who is immune from such relief.
 7 28 U.S.C. § 1915A(b)(1), (2).

8 A pleading must contain a “short and plain statement of the claim *showing* that the
 9 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does not
 10 demand detailed factual allegations, “it demands more than an unadorned, the-defendant-
 11 unlawfully-harmed-me accusation.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009).
 12 “Threadbare recitals of the elements of a cause of action, supported by mere conclusory
 13 statements, do not suffice.” Id.

14 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
 15 claim to relief that is plausible on its face.’” Id. (quoting Bell Atlantic Corp. v. Twombly,
 16 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content
 17 that allows the court to draw the reasonable inference that the defendant is liable for the
 18 misconduct alleged.” Id. “Determining whether a complaint states a plausible claim for
 19 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
 20 experience and common sense.” Id. at 1950. Thus, although a plaintiff’s specific factual
 21 allegations may be consistent with a constitutional claim, a court must assess whether there
 22 are other “more likely explanations” for a defendant’s conduct. Id. at 1951.

23 But as the United States Court of Appeals for the Ninth Circuit has instructed, courts
 24 must “continue to construe *pro se* filings liberally.” Hebbe v. Pliler, 627 F.3d 338, 342 (9th
 25 Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less stringent standards
 26 than formal pleadings drafted by lawyers.’” Id. (quoting Erickson v. Pardus, 551 U.S. 89,
 27 94 (2007) (*per curiam*)).

28 . . .

1 **III. Complaint**

2 Plaintiff alleges one count for violation of his religious exercise and equal protection
3 rights. Plaintiff sues the following current or former employees of the Arizona Department
4 of Corrections (ADC): Director Charles L. Ryan, Pastoral Administrator Mike Linderman,
5 and Florence Complex Senior Chaplain Allen Miser. Plaintiff seeks declaratory, injunctive,
6 and punitive relief.

7 Plaintiff alleges the following facts: Plaintiff is a Muslim. During the holy month of
8 Ramadan, Muslims must fast from sunrise until sunset. During Ramadan, Muslims may eat
9 their morning meal prior to sunrise and must engage in group prayer. At the end of
10 Ramadan, Muslims engage in a celebration for successful completion of Ramadan with a
11 Halal meal. In 2012, Ramadan commenced on July 20 until August 19, 2012.

12 On June 6, 2012, Plaintiff submitted an Inmate Letter to South Unit Chaplain Samuel
13 Lee requesting enrollment in 2012 Ramadan observances, which were to commence July 20,
14 2012 at 4:14 a.m. and end August 19, 2012. Lee approved Plaintiff's request.

15 On July 13, 2012, a meeting was held between ADC officials, specifically Chaplain
16 Irby and Linderman, and representatives from the Islamic Center of Tucson (ICT) concerning
17 Ramadan observances. The ICT representatives had learned that ADC planned to provide
18 Muslim inmates with their morning meal during Ramadan at 5:00 a.m., which was after
19 sunrise. The ADC officials indicated that Muslim inmates could pray and eat purchased food
20 in their cells prior to sunrise, if they chose. They also indicated that Muslim inmates could
21 eat donated food in their cells prior to sunrise. ICT representatives were satisfied that
22 Muslim inmates could observe Ramadan if they were allowed to eat purchased or donated
23 food in their cells prior to sunrise.

24 Plaintiff alleges that Ryan, Linderman, and Miser implemented a 5:00 a.m. turn out
25 policy, i.e., provision of the morning meal after sunrise, which forced Plaintiff to choose
26 between the morning meal and his religious obligations. Plaintiff was indigent and lacked the
27 resources to purchase food to eat in his cell prior to sunrise during Ramadan and Plaintiff did
28 not know that he could eat donated food for Muslim inmates in his cell during Ramadan.

1 During the 2012 Ramadan, Plaintiff was unable to engage in group prayer or eat his morning
2 meal prior to sunrise, which he alleges substantially burdened his religious exercise. He
3 alleges the absence of a compelling government interest in denying his religious exercise
4 or that Defendants used the least restrictive means to further any legitimate government
5 interest. Plaintiff contends that Defendants' policy was motivated by anti-Islamic animus
6 and that Defendants treated other religious groups differently than Muslims where he was
7 not informed that he could receive donated food from the ICT during Ramadan and where
8 Catholic and Jewish inmates were permitted to receive donated religious foods, even if they
9 were not indigent, unlike Muslim inmates. Plaintiff further alleges that he was unable to
10 engage in a Halal meal at the end of Ramadan to celebrate successful observance of
11 Ramadan.

12 **VI. Claims for Which an Answer Will be Required**

13 Plaintiff alleges that Defendants Ryan, Linderman, and Miser promulgated or
14 implemented a policy that substantially burdened his religious exercise rights under the First
15 Amendment and RLUIPA by providing the morning meal to Muslim inmates during
16 Ramadan 2012 after sunrise and by preventing Muslim inmates from engaging in group
17 prayer prior to sunrise during Ramadan 2012. Plaintiff also alleges that Defendants Ryan,
18 Linderman, and Miser failed to inform or make available donated religious food to Muslim
19 inmates, regardless of indigence, during Ramadan, unlike other religious sects and thereby
20 violated his equal protection rights. Defendants Ryan, Linderman, and Miser will be
21 required to respond to Plaintiff's religious exercise and equal protection claims in his
22 Complaint.

23 **V. Warnings**

24 **A. Release**

25 Plaintiff must pay the unpaid balance of the filing fee within 120 days of his release.
26 Also, within 30 days of his release, he must either (1) notify the Court that he intends to pay
27 the balance or (2) show good cause, in writing, why he cannot. Failure to comply may result
28 in dismissal of this action.

1 **B. Address Changes**

2 Plaintiff must file and serve a notice of a change of address in accordance with Rule
3 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
4 relief with a notice of change of address. Failure to comply may result in dismissal of this
5 action.

6 **C. Copies**

7 Plaintiff must serve Defendants, or counsel if an appearance has been entered, a copy
8 of every document that he files. Fed. R. Civ. P. 5(a). Each filing must include a certificate
9 stating that a copy of the filing was served. Fed. R. Civ. P. 5(d). Also, Plaintiff must submit
10 an additional copy of every filing for use by the Court. See LRCiv 5.4. Failure to comply
11 may result in the filing being stricken without further notice to Plaintiff.

12 **D. Possible Dismissal**

13 If Plaintiff fails to timely comply with every provision of this Order, including these
14 warnings, the Court may dismiss this action without further notice. See *Ferdik v. Bonzelet*,
15 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to
16 comply with any order of the Court).

17 **IT IS ORDERED:**

- 18 (1) Plaintiff's Application to Proceed *In Forma Pauperis* is **granted**. (Doc. 2.)
- 19 (2) A required by the accompanying Order to the appropriate government agency,
20 Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing fee of \$10.66.
- 21 (3) Defendants Ryan, Linderman, and Miser must answer Count I.
- 22 (4) The Clerk of Court must send Plaintiff a service packet including the
23 Complaint (Doc. 1), this Order, and both summons and request for waiver forms for
24 Defendants Ryan, Linderman, and Miser.

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1 (5) Plaintiff must complete¹ and return the service packet to the Clerk of Court
2 within 21 days of the date of filing of this Order. The United States Marshal will not provide
3 service of process if Plaintiff fails to comply with this Order.

4 (6) If Plaintiff does not either obtain a waiver of service of the summons or
5 complete service of the Summons and Complaint on a Defendant within 120 days of the
6 filing of the Complaint or within 60 days of the filing of this Order, whichever is later, the
7 action may be dismissed as to each Defendant not served. Fed. R. Civ. P. 4(m); LRCiv
8 16.2(b)(2)(B)(i).

9 (7) The United States Marshal must retain the Summons, a copy of the Complaint,
10 and a copy of this Order for future use.

11 (8) The United States Marshal must notify Defendants of the commencement of
12 this action and request waiver of service of the summons pursuant to Rule 4(d) of the Federal
13 Rules of Civil Procedure. The notice to Defendants must include a copy of this Order. **The**
14 **Marshal must immediately file signed waivers of service of the summons. If a waiver**
15 **of service of summons is returned as undeliverable or is not returned by a Defendant**
16 **within 30 days from the date the request for waiver was sent by the Marshal, the**
17 **Marshal must:**

18 (a) personally serve copies of the Summons, Complaint, and this Order upon
19 Defendant pursuant to Rule 4(e)(2) of the Federal Rules of Civil Procedure; and

20 (b) within 10 days after personal service is effected, file the return of service
21 for Defendant, along with evidence of the attempt to secure a waiver of service of the
22 summons and of the costs subsequently incurred in effecting service upon Defendant.
23 The costs of service must be enumerated on the return of service form (USM-285) and
24 must include the costs incurred by the Marshal for photocopying additional copies of
25 the Summons, Complaint, or this Order and for preparing new process receipt and

26
27 ¹If a Defendant is an officer or employee of the Arizona Department of Corrections,
28 Plaintiff must list the address of the specific institution where the officer or employee works.
Service cannot be effected on an officer or employee at the Central Office of the Arizona
Department of Corrections unless the officer or employee works there.

return forms (USM-285), if required. Costs of service will be taxed against the personally served Defendant pursuant to Rule 4(d)(2) of the Federal Rules of Civil Procedure, unless otherwise ordered by the Court.

(9) A Defendant who agrees to waive service of the Summons and Complaint must return the signed waiver forms to the United States Marshal, not the Plaintiff.

(10) Defendant must answer the Complaint or otherwise respond by appropriate motion within the time provided by the applicable provisions of Rule 12(a) of the Federal Rules of Civil Procedure.

9 (11) Any answer or response must state the specific Defendant by name on whose
10 behalf it is filed. The Court may strike any answer, response, or other motion or paper that
11 does not identify the specific Defendant by name on whose behalf it is filed.

12 (12) This matter is referred to Magistrate Judge David K. Duncan pursuant to Rules
13 72.1 and 72.2 of the Local Rules of Civil Procedure for all pretrial proceedings as authorized
14 under 28 U.S.C. § 636(b)(1).

15 DATED this 19th day of June, 2013.

Robert C. Broomfield
Senior United States District Judge